

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6305 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 - Yes 2 to 5 - No

PATEL LINABEN MANILAL

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioners

MS. HARSHA DEVANI, AGP, for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/08/98

ORAL JUDGEMENT

By way of this Special Civil Application filed under Article 226 of the Constitution of India, the petitioners have challenged the action of the respondents in making reservation in appointment of Vidhya Sahayaks (primary teachers) to the tune of more than 75% of the total strength available and advertised on the ground

that the action is ultra vires being contrary to law and the principle laid down by the apex court in the case of INDRA SAWHNEY VS. UNION OF INDIA reported in AIR 1993 SC 477.

2. It is stated that applications were invited for appointment in the post of Vidhya Sahayaks in various primary schools in the District Panchmahals. In the said advertisement it has been pointed that there are 898 posts vacant out of which 36 posts have been reserved for the Scheduled Castes and 359 posts have been reserved for Scheduled Tribes and 242 posts have been reserved for Socially and Educationally backward classes and 36 posts are for physically handicapped, 2 posts for Bhangi Community and 220 posts are for general category. It is also stated that a similar advertisement was issued in respect of Dahod District Panchayat. In the said advertisement it is stated that there are 1174 posts vacant. Out of the said posts, 46 posts have been reserved for Scheduled Castes, 469 for Scheduled Tribes, 317 for the Socially and Educationally Backward classes, 47 for physically handicapped, 2 for Bhangi community and 293 posts for general category. The petitioners have also referred to same situation in other districts, namely Bharuch, Narmada District and Vadodara.

An affidavit has been filed by Shri A.A. Nagori, Joint Secretary, Education Department stating that the posts have been reserved on the basis of the policy decision of the State Government which is provided by the Government Resolution dated 30.9.1994 of the General Administrative Department. It is also stated by the said Government Resolution that the Government has fixed the new roster numbers with respect to the changes in the percentage of reservation for the Scheduled Tribes, Scheduled Castes, Socially and Educationally Backward Classes and physically handicapped persons for services under the State Government. It is pointed out that so far as the present case is concerned, the reservation for the direct recruitment to Class 3 posts is relevant. As per the Government Resolution the reservation for appointments to Class-3 posts at District level is provided district-wise as per Schedule 5 to 20. A statement showing the percentage of reservation with respect to each district as per the said Government Resolution has been annexed with the reply at annexure-A1 which is extracted as follows:-

District-wise percentage for direct recruitment as fixed by the General Administrative Department by Government Resolution dated 30.9.1994

S.No.	Name of District		SC	ST	SEBC	P.H.	Total
1.	Ahmedabad	11	10	27	4	52	
2.	Banaskantha	10	7	27	4	48	
3.	Surendranagar		11	1	27	4	43
4.	Kutch	11	6	27	4	48	
5.	Mehsana		9	1	27	4	41
6.	Amreli		9	1	27	4	41
7.	Sabarkantha	9	17	27	4	57	
8.	Jamnagar		7	1	27	4	39
9.	Rajkot		7	1	27	4	39
10.	Bhavnagar		6	1	27	4	38
11.	Junagadh		9	1	27	4	41
12.	Kheda	6	5	27	4	42	
13.	Panchmahal		4	40	27	4	75
14.	Surat	4	40	27	4	75	
15.	Vadodara	6	25	27	4	62	
16.	Bharuch	5	40	27	4	76	
17.	Gandhinagar		7	5	27	4	43
18.	Valsad		3	40	27	4	74
19.	Dang	1	40	27	4	72	

Mr. Mangukia, learned counsel, appearing for the petitioners contends that the apex court in INDRA SAWHNEY'S case (supra) has ruled the reservation contemplated under Article 16 of the Constitution of India should not exceed 50%. In view of this the reservation in different districts on the basis of population beyond 50% is unconstitutional being contrary to law laid down by the apex court. On the other hand Mr. P.G. Desai, learned PP, submits that the apex court in para 94A has said that reservation under Article 16(4) should not exceed 50% of the appointment or posts barring certain extraordinary situation. The observation of the apex court is extracted as follows:-

"Just as every power must be exercised reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits - and what is more reasonable than to say that reservation under clause (4) shall not exceed 50% of the appointments or posts, barring certain extra-ordinary situations."

The apex court in the same paragraph has further observed as follows:-

"While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population

inhabiting those areas might, on account of their being out of the main stream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

The learned counsel has invited my attention to para 10 of the affidavit filed by the respondent wherein it is stated that the experience of the Government is that the candidates belonging to the general category are normally reluctant in going to regions with predominantly Tribal population. It is also stated that the adivasis of this region did not feel comfortable outside their region. He has also stated that higher percentage of reservation is not provided to them within the predominantly tribal areas. They normally would not venture outside the district to get employment elsewhere. It is also stated that if due weightage is not given to the Scheduled Tribes by providing more seats within the district, they would be deprived of progress, since generally the Scheduled Tribe candidates are not willing to go outside their districts. It is also pointed out that Scheduled Tribes population in several districts is very low. In such situation, it is the experience that the posts reserved against Scheduled Tribes remained vacant. Considering all these facts, it is considered proper to make reservation on the district basis as per the population. It is pointed out that Districts like Dang where the population is 90% of Scheduled Castes, if only 50% reservation is given, it will work against the persons of Scheduled Tribes.

I have considered the rival contentions. I have carefully read the decision in INDRA SAWHNEY's case. It is true that the apex court has held that reservation should not exceed 50%, however, the court has also said that in certain situation there can be exception. The schedule extracted above clearly indicates that there are only few districts like Dang, Valsad, Bharuch, Surat and Panchmahals where the reservation has exceeded 50% and in rest of the districts the percentage is either just 50% or below. It is also to be borne in mind that the Government Notification dated 30.9.1994 whereby the policy decision has been taken and on that basis a Schedule has been prepared is not under challenge. The petitioner has only challenged the implementation of the policy decision. In the peculiar facts and circumstances of the case, I do not find any infirmity in the

implementation of the policy. In view of the aforesaid, I find no merit in the Special Civil Applcation and the same is accordingly rejected. Rule discharged. Interim relief vacated.

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